

**EXHIBIT 6**

UNITED STATES BANKRUPTCY COURT  
WESTERN DISTRICT OF PENNSYLVANIA

IN RE: . Case No. 01-01139 (JKF)  
. Jointly Administered  
W.R. GRACE & COMPANY, .  
et al., . 5414 U.S. Steel Tower  
. 600 Grant Street  
. Pittsburgh, PA 15219  
Debtors. .  
. June 22, 2009  
. 9:04 a.m.  
. . . . .

TRANSCRIPT OF HEARING  
BEFORE HONORABLE JUDITH K. FITZGERALD  
UNITED STATES BANKRUPTCY COURT JUDGE

APPEARANCES:

For the Debtors: Kirkland & Ellis, LLP  
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Proceedings recorded by electronic sound recording, transcript  
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1 apply to loan agreements. It says it right in the Code, and  
2 I'm happy to review it with particularity.

3 THE COURT: No, I understand, and you're concept of  
4 the fact that even the filing of bankruptcy without the ipso  
5 facto clause would accelerate the payments. That's why you  
6 have a claim that you can file is not something that I even  
7 think I need to have you argue.

8 MR. COBB: So, Your Honor, with -- just so I'm clear,  
9 I want to -- because I want to walk carefully through this,  
10 Your Honor agrees with me that the filing of the bankruptcy  
11 case is a default.

12 THE COURT: No, I agree that it accelerates the  
13 payments under the loan, because that's what you have to do in  
14 order to file your claim.

15 MR. COBB: Okay.

16 THE COURT: The Bankruptcy Code will accelerate all  
17 the obligations up to the point of the filing of the  
18 bankruptcy. So any obligation that is due you can file your  
19 claim for. Not stated very well, but --

20 MR. COBB: All right. That's okay, Your Honor. Let  
21 me see if I understand. So if I can show Your Honor in the  
22 loan agreements where the filing of the bankruptcy proceeding  
23 is a default, and that default kicks in default interest, I can  
24 sit down.

25 THE COURT: I don't know. Show me -- wait till I

1 that the simple answer on impairment is 1124(1), under PPIE.  
2 PPIE says, you give force to whatever bankruptcy limitations  
3 apply and that includes 502, 726, therefore, no impairment  
4 because the limitation that we're invoking is 502, perhaps,  
5 726, either way we work.

6 We then get to Column 2, which is, they say, TAC, is  
7 there such -- and the preliminary question on TAC on is, is  
8 there such a thing as TAC on? Is there such a thing as a source  
9 of a right to interest that goes beyond the claim.

10 THE COURT: Okay, I got it. We don't have to redo  
11 that.

12 MR. BERNICK: Yes. And it's the same basic deal, but  
13 the proof of the pudding, the proof of the pudding, this is why  
14 what they're doing is so key here, is that 502 speaks directly  
15 to unmatured interest as of the date of the filing.

16 THE COURT: Right.

17 MR. BERNICK: And their particular, their particular  
18 breed of entitlement to unmatured interest is the provision of  
19 their loan document that speaks the moment the petition is  
20 filed. This might be different if they had a condition in  
21 their contract that they could argue gave rise to a default  
22 post petition. We could still argue about whether 502 still  
23 was a bar, but 502 specifically addresses the particular kind  
24 of provision that they've got here. It basically trumps, you  
25 could read -- you know, you read 502, 502 specifically, on the

1 moment, trumps the kind of provision that they're invoking,  
2 which is, rights that are triggered by the very fact of filing.  
3 Indeed, you could say that effectively, 502 accomplishes the  
4 same effect as the ipso facto precedence. It says, you can't  
5 improve your position by virtue of the debtor having filed,  
6 which then goes back to Your Honor's argument.

7           Your Honor's argument says that that's essentially  
8 what we're saying, is that the debtor in taking advantage of  
9 the fact that they're permitted to file the petition, thereby,  
10 and gets into the protection of bankruptcy, including against  
11 impairment arguments, by virtue of having filed.

12           And, therefore, and that's right, this really is  
13 exactly the kind of -- if this provision is enforced,  
14 notwithstanding 502, it basically always enables every single  
15 time, the unsecured creditors to get what 502 would otherwise  
16 deny them.

17           THE COURT: Well, okay. Your argument, if I  
18 understand it correctly is, that 502 sets the allowed claim. In  
19 this instance, I've defined the allowed claim as not including  
20 any unmatured interest, which is what 502(b)(2) tells me I have  
21 to do by operation of law.

22           MR. BERNICK: Right.

23           THE COURT: Okay. So, their unmatured -- or I'm  
24 sorry, their prepetition allowed claim, as I've defined it and  
25 ruled, is the principal without interest. The debtors' plan

1 position that it was wrong, well then we're going to walk right  
2 through the door and we're going to put in some more evidence  
3 on that, it's not just a declaration, there's more that's  
4 there. But, yes, we believe that Your Honor got it right on  
5 non-payment the first time.

6           With respect to the payment portions, they're now  
7 focused and they argue the acceleration provision and the lack  
8 of need for notice, we say, okay, let's talk about that. We  
9 thought before that that was disposed of because it's,  
10 effectively, an ipso facto provision and ipso facto provisions  
11 are not favored, in fact, we've got more cases that are outside  
12 the 365 context, but even if you were to acknowledge that  
13 they've got this provision and even if this provision were to  
14 read out in some fashion as being applicable to this case, it  
15 can't trump 502, because 502 speaks specifically to this. And  
16 if 502 speaks specifically to it, then they can't get to  
17 impairment under PPIE.

18           502 says -- where's 502?

19           THE COURT: Well, the 365 argument, of course, is  
20 still talking about contracts, even contracts to make loans  
21 that are executory, and carves out an exception to those  
22 contracts. So, I'm not sure 365 applies in this context, I  
23 don't think anybody has ever argued that this contract, the  
24 loan that's at issue, is executory. So, I don't think  
25 365(e)(2) applies at all to the circumstances here.

1 MR. BERNICK: But we also believe that the ipso facto  
2 law is not confined to 365.

3 THE COURT: Well, there are cases that would support  
4 that view, there are also cases that would talk about financial  
5 accommodations in a slightly different context. I'm not sure I  
6 need to get there, I don't think 365 applies. At least if it  
7 does, I've never heard a word, by anybody, suggesting that this  
8 is an executory contract. So, I don't think 365, in that  
9 sense, is operative in this case.

10 With respect to the 502 argument you're making, I  
11 understand it. So, why don't we take a break, if you want to  
12 cite a couple of cases when we get back, we'll do that, and  
13 I'll give you a chance, Mr. Cobb, after the break. We're  
14 taking a ten minute recess.

15 UNIDENTIFIED MALE SPEAKER: Sorry, Your Honor.

16 (Recess)

17 THE COURT: Please be seated. Mr. Bernick, before  
18 you begin, I want to note for the record that I have had the  
19 Sheppards checked on both on West Law and on LEXUS, again, for  
20 the NextWave opinion that we cited in the opinion and I can't  
21 see any place that it's been vacated, reversed, overruled. In  
22 fact, I can't even see that it was appealed. So, if somebody  
23 has an indication of where that is, I would like it. There are  
24 a series of NextWave cases that have, in fact, been vacated on  
25 appeal, but not the one we cited.

1 we've been talking about here.

2           We're saying that 502, by its very terms, is in a  
3 sense, a specific ruling on de facto in the context of  
4 unmatured interest because it speaks specifically to unmatured  
5 interest as of the date of the filing and the ipso facto clause  
6 that they're talking about, obviously, is as of the date of the  
7 filing. So, it's right on point and, obviously, would then  
8 trigger the non-impairment argument under PPIE in exactly the  
9 fashion that we've indicated.

10           But counsel is kind of at pains to suggest that  
11 somehow ipso facto clauses are only disfavored in the context  
12 of 365. And the answer to that is no. 365 addresses ipso  
13 facto, but so does 541 and Judge Walrath's decision in the  
14 context of the EBCI case, specifically deals with Section 541,  
15 which has to do with property of the estate, and says that ipso  
16 facto clauses do not control what constitutes property of the  
17 estate. The estate can't be divested of property rights by  
18 virtue of an ipso facto clause.

19           So -- and, then she goes on to comment, Judge Walrath  
20 goes on to comment that they are, generally ipso facto clauses  
21 are generally disfavored, if not outright unenforceable, under  
22 the bankruptcy code. It's broad language, but that's a  
23 particularly appropriate observation in this case because  
24 there's not just one, but there's clearly more than one,  
25 there's 541, and we would say, 502, all of them express exactly



1 the same policy. Exactly the same policy. And under 502 it's  
2 not a policy, it is an actual provision that under PPIE means  
3 that there can't be impairment to the extent that clause does  
4 not result in acceleration.

5           In the course of the break, my bankruptcy mentor,  
6 Theodore Freedman, also pointed out to me that there is an  
7 additional provision of 1124 that we ought to focus on and that  
8 is 1124(2). We've only been talking about 1124(1), but if you  
9 talk about 1124(2), this applies, this says a class is impaired  
10 under a plan with respect to each claim or interest of such  
11 class unless, with respect to each claim, the plan -- I don't  
12 have the highlighter but -- notwithstanding any contractual  
13 provision, or applicable law that entitles the holder of such  
14 claim or interest, to demand or receive accelerated payment of  
15 such claim or interest after the occurrence of a default, which  
16 is what they're arguing, (a) cures any such default of a cure  
17 before or after the commencement of the case under this title,  
18 other than a default of a kind, specified kind, not the default  
19 specified in 365(b)(2) of the kind of this title, or of a kind  
20 that 365(b)(2) expressly does not require to be cured.

21           What this says is that if the plan cures a default  
22 that otherwise gives rise to a demand for accelerated payment,  
23 if it cures a default, then there's not impairment. And,  
24 effectively, our plan cures the default to the extent that  
25 there was non-payment of principal and interest. Effectively,

1 it does that and, therefore, really, unless you've got the --  
2 unless the ipso facto clause is to be recognized.

3           So, our plan also is unimpaired with respect to the  
4 lender group by virtue of 124(2) and then it says, but then  
5 goes further. It says, well, the question is, well, are we  
6 curing default insofar as a default rate of interest is  
7 concerned, and the answer is no. We're not. But you take a  
8 look at the remainder of the language of 1124(2)(a), it  
9 specifically excludes that kind of default that does --  
10 essentially does not need to be cured. What does that refer  
11 to?

12           Well, if you take a look at 365(b)(2) --

13           THE COURT: Well, 365 isn't going to apply anyway.

14           MR. BERNICK: I understand that. But that was the  
15 first thing I pushed back on Mr. Freedman for, but I think he's  
16 correct, which is that this refers to a default of a kind  
17 specified, it is the kind of default. In other words, this is  
18 not a provision that is simply reading out to 365. This is a  
19 more general provision. This provision says that if your plan  
20 cures a default, that's the basis of a claim for acceleration,  
21 it's not impairment. However, it also further says, you don't  
22 have to cure the kind of default that wouldn't have to be cured  
23 under 362. And what does that mean? It's 362(b)(2) and that,  
24 of course, is defaults that include the commencement of the  
25 case.

1 THE COURT: The commencement of the case.

2 MR. BERNICK: So, if you take a look at 1124(2)(a),  
3 (2)(a) recognizes now in the context of impairment,  
4 specifically. Here we were talking about 502 means, that ipso  
5 facto causes giving rise to acceleration are not recognized as  
6 being allowable, now in the context of impairment, if we take a  
7 look at 1124(2), 1124(2) recognizes that (a), where you've  
8 cured, it's not impaired, and we have cured -- we have more  
9 than cured with respect to the non-default contract rate and,  
10 therefore, we're okay here, then they said -- and then to  
11 answer the point that we haven't cured with respect to the  
12 default, contract default rate, the answer is, we don't have to  
13 cure because this contemplates that those kinds of defaults are  
14 not being recognized by the code. And that is specifically --

15 THE COURT: Okay. Can I get back to what we were  
16 supposed to be doing today, because the time is two hours past  
17 it and we only have through Wednesday to get through  
18 everything.

19 MR. BERNICK: Right.

20 THE COURT: We were supposed to be here for an  
21 evidentiary hearing. Are there any facts that are in dispute  
22 because you folks can argue all of this in a supplemental  
23 brief. I think that PPI addresses somewhat this issue that  
24 you're raising now, in any event. The thing about PPI is it  
25 doesn't say what the rate of interest is that has to be applied

1 Court on whatever schedule you think is appropriate.

2 THE COURT: All right. Mr. Pasquale?

3 MR. PASQUALE: Thank you, Your Honor, Ken Pasquale  
4 for the Committee. Mr. Freedman will be surprised, but I stand  
5 to help the debtors.

6 We talked about this a little bit on Thursday and now  
7 I'm focused on the non-lender claims, of which Morgan Stanley  
8 is one, but the non-lender claims in Class 9.

9 We did, for the committee, raise various objections  
10 with respect to the treatment of that group of creditors, and  
11 just so the record is clear, it is true the provisions in the  
12 plan were suggested by the committee and negotiated with the  
13 debtors. That doesn't bind any individual creditor like Morgan  
14 Stanley, that's the Kensington case that's been cited to the  
15 Court many times from the Third Circuit.

16 With respect to the committee's objection, however,  
17 with respect to that sub-group of creditors in Class 9, the  
18 debtors have made a statement that they are going to modify the  
19 language with respect to the litigation protocol, to make clear  
20 that no creditors legal, contractual, equitable rights, the  
21 language from 1124, will be impacted by the procedures.

22 We wanted to be sure to preserve the argument that  
23 any of those creditors had, to argue anything, both a default  
24 rate, a contractual rate different from that provided in the  
25 plan, interest on interest, whatever arguments they may have.

1 talk about this and we'll finalize the scheduling issues  
2 tomorrow.

3 THE COURT: Yes, sir.

4 MR. BROWN: Yeah, we're a little confused, but I  
5 think we can take it up tomorrow morning.

6 THE COURT: Well, this is what I have so far, if this  
7 will help, but, you know, if you want to modify it, you can let  
8 me know in the morning. The debtor is to submit all of their  
9 evidence to the insurers by July 2nd. Well, let's start with  
10 tomorrow. We'll put all of the insurer evidence in tomorrow.  
11 Then the debtors will do their counter-designations by July  
12 2nd. By July 16, everybody's briefs are due, limited to 30  
13 pages. So I expect one collective insurance brief and one  
14 collective plan proponent brief. If you can't do it  
15 collectively, you can divide up the number of pages among you,  
16 but 30 pages. That's what I'm aiming for because I already  
17 have massive briefs.

18 I don't want you to restate a single thing. What I'm  
19 looking for is a post-trial submission, not a pretrial  
20 submission. Don't redo it. I don't want to read it again.  
21 I've been through it already. It took me a long time. I don't  
22 want -- and I don't want it repeated. Okay. Argument, if I  
23 need it, would be on July 22nd which is Tuesday at 9:00.

24 UNIDENTIFIED ATTORNEY: 21st, Your Honor.

25 UNIDENTIFIED ATTORNEY: 21st.